EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

THE CITY OF HUNTINGTON,

    Plaintiff,

v.   CIVIL ACTION NO. 3:17-01362

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

    Defendants.
_____

CABELL COUNTY COMMISSION,

    Plaintiff,

v.   CIVIL ACTION NO. 3:17-01665

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

    Defendants.
_____

MEMORANDUM OPINION AND ORDER

Pending before the court is defendants' motion to exclude expert testimony proffered by Joseph Rannazzisi. See ECF No. 1057. From 2005 to 2015, Mr. Rannazzisi served as the Deputy Assistant Administrator for the Office of Diversion Control in the Drug Enforcement Agency ("DEA"). He is now retired from DEA.

Plaintiffs have retained Rannazzisi as an expert witness in the opioid litigation but plaintiffs have not designated him as an expert witness in these cases. According to plaintiffs, they will not be eliciting testimony from Rannazzisi outside the scope

of his deposition taken in Track 1 of the MDL, where he testified as a fact witness on behalf of the DEA.

In reply, defendants argue that Mr. Rannazzisi should be prohibited from testifying at all. According to them, "it is not plausible or realistic that Mr. Rannazzisi could separate the knowledge gained working as a plaintiffs' expert over the past three years from the knowledge he had before spending the last several years studying Defendants' documents and witness testimony." ECF No. 1134 at 4.

Defendants' motion is **DENIED** insofar as it seeks to prohibit Mr. Rannazzisi from testifying as a fact witness. However, Mr. Rannazzisi is not an expert in these cases. Should Rannazzisi's trial testimony start to move outside the bounds of his deposition testimony in the Track 1 cases, defendants should bring it to the court's attention.

The Clerk is directed to send copies of this Memorandum Opinion and Order to those counsel of record who have registered to receive an electronic NEF.

IT IS SO ORDERED this 8th day of April, 2021.

ENTER:

David A. Faber
Senior United States District Judge